

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1011 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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NARANBHAI K MAKWANA

Versus

DIST DEVELOPMENT OFFICER  
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Appearance:

MR AN PATEL for Petitioner  
MR HS MUNSHAW for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/02/2000

ORAL JUDGEMENT

Two prayers have been made by the petitioner in this writ petition. The first is an order or direction in the nature of restraint order restraining the respondent from discharging the petitioner from service and the other is direction to the respondent to absorb

the petitioner on the regular establishment. The petitioner was appointed as Work-charge Clerk with the respondent since 1979. He has alleged artistically that because he belongs to the Scheduled Caste, he is not being absorbed in the regular establishment as Clerk of the Respondent Panchayat though he has continuously served with the respondent and was paid salary of Work-charge Clerk. It is alleged that the petitioner was paid salary in the scale of Rs.260-400 and he discharged his duties efficiently. It was further alleged that the respondent has failed to discharge his duties in not considering the petitioner in absorbing on the regular employment as Clerk. It is this inaction of the respondent which has been challenged through this writ petition. Discrimination was also alleged that as per the seniority list the Work Charge Clerks junior to the petitioner had been retained from time to time but the petitioner was discharged from time to time. After the petitioner became overage he filed this petition seeking the aforesaid reliefs. He made an unsuccessful attempt in obtaining interim relief from this Court which was refused on 15.4.88. Some time was granted till 22.4.88 to enable the petitioner to file Letters Patent Appeal against the order refusing interim relief. Shri H.S.Munshaw, Learned Counsel for the respondent informs that neither Letters Patent Appeal was filed nor any stay order was obtained from the Appellate Court and thereafter no progress has been made in this petition.

2. Counter affidavit of the District Development Officer Shri S.M.F. Bhukhari was filed from the side of the respondents in which it is denied that the petitioner was serving with the respondent no.1 as Work Charge Clerk since 1979 and was given only artificial break in service. On the other hand it was stated that the petitioner never worked continuously as Work Charge Clerk or in any other capacity since 1979. It is further stated in the affidavit that even according to the appointment order, the petitioner was appointed as temporary scarcity relief Clerk in the scale of Rs.260-400 and he was appointed on temporary basis for the work of scarcity relief. According to the conditions of appointment of scarcity relief vacancy, one of the conditions was that the appointee should not be more than 25 years of age. In spite of this, the petitioner made intentional concealment of age. He was more than 32 years and was born on 10.6.54 as per his own admission. Since the appointment was purely temporary, the petitioner could be terminated without issuing show cause notice or any other type of notice. Regarding allegation of non-absorption of the petitioner on regular basis it

is deposed in the affidavit that the petitioner never worked on continuous basis since 1979 and there was large number of breaks from 1980 to 1981 and even in 1979 and 1980. It is also stated that mostly whenever appointment was given to the petitioner it was for 29 days and not that he was continuously working with the respondent. Thus denying the allegation that the petitioner worked continuously since 1979 with the respondent and further alleging concealment of correct age by the petitioner, it has been pleaded that the petitioner is not entitled to any relief.

3. From the averments made in the counter affidavit, it is clear that the petitioner secured temporary appointment on scarcity relief measure for a period not exceeding 29 days and there were large number of breaks and it was not a case where the petitioner's appointment exceeded 29 days or that it was continuous appointment. If this was so then the respondent could not be blamed for not considering the case of the petitioner for absorption on regular basis. A person appointed on temporary basis for scarcity relief work has or had no right to post. It is not averred in the petition that he continued in service on the date of the petition. As such there is no merit in the petition which is hereby dismissed with no order as to costs.

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